

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Implementing a Nationwide, Broadband, 229</b>	)	<b>PS Docket No. 06-</b>
<b>Interoperable Public Safety Network</b>	)	
<b>in the 700 MHz Band</b>	)	
	)	
<b>Development of Operational, Technical 86</b>	)	<b>WT Docket No. 96-</b>
<b>and Spectrum Requirements for Meeting</b>	)	
<b>Federal, State and Local Public Safety</b>	)	
<b>Communications Requirements Through</b>	)	
<b>the Year 2010</b>	)	

**To: The Federal Communications Commission**

**COMMENTS  
OF THE  
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute (“API”), by its attorneys, is pleased to submit these Comments to the Federal Communications Commission (“FCC” or “Commission”) in response to the Ninth Notice of Proposed Rulemaking (“NPRM”) released on December 20, 2006 in the above captioned proceeding.<sup>1</sup> The NPRM seeks comment on the Commission’s proposal for the creation of a centralized, national network to maximize public safety access to interoperable, broadband

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<sup>1</sup> See Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, Ninth Notice of Proposed Rulemaking, 21 FCC Rcd 14837 (2006).

spectrum in the 700 MHz band. As discussed herein, API requests that the Commission clarify the eligibility of Non-Governmental Organizations (“NGOs”) to receive service under such a plan and require that any central, nationwide licensee be required to provide service on a non-discriminatory basis.

## **I. Background**

1. API is a national trade association representing more than 400 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing committees of the Organization’s Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

2. API’s Telecommunications Committee is supported and sustained by companies that make use of a wide variety of wireline, wireless and satellite communications services on both a private and commercial basis. API member companies are authorized by the Commission to operate facilities in the Private Land Mobile Radio (“PLMR”) service among other telecommunications systems. API’s members utilize PLMR systems, for example, to support the search for and production of oil and natural gas, to ensure the safe pipeline transmission of

natural gas, crude oil and refined petroleum products, to process and refine these energy sources and to facilitate their ultimate delivery to industrial, commercial and residential customers.

3. The continued operation of communications systems employed by petroleum and natural gas companies is absolutely essential to protecting lives, health and property, both in connection with the day-to-day operations of these companies, as well as during responses to emergency incidents. As the Commission has recognized, Critical Infrastructure Industries such as the oil and natural gas industry perform vital safety functions.<sup>2</sup> Due to the potentially hazardous nature of oil and natural gas exploration, production and transportation, safety is a primary concern at all industry facilities. Substantial resources and communications infrastructure are employed both to prevent accidents as well as to respond quickly in the event that an incident occurs.

4. Like many NGOs, oil and natural gas companies provide an important safety benefit not only to private industry but also to the public at large. Many API members have emergency response equipment, including telecommunications facilities, assembled and stored in shipping containers and/or vehicles for expedited transport to an incident site, regardless of its geographic location. Refineries often employ on-site fire departments, trained in fire fighting procedures specific to refinery emergencies. Emergency response teams and safety personnel employed by the oil and natural gas industry are often the first on the scene in an emergency

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<sup>2</sup> See 47 C.F.R. § 90.7.

situation. Training and drills are often held in conjunction with local fire departments, and industry safety personnel regularly coordinate with public safety officials during disaster situations. As the Commission has recognized, it is absolutely essential for the protection of life and property that these facilities have access to public safety spectrum.

## **II. THE COMMISSION SHOULD RETAIN THE ELIGIBILITY RULES FOR THE NETWORK**

5. API takes no position with respect to the question of whether the Commission's proposed nationwide, broadband, public safety network will benefit the public interest. Instead, API is solely concerned that NGOs providing "public safety services," as that term is defined under Section 337(f)(1) of the Communications Act of 1934, as amended, ("Act") and implemented under Section 90.523 of the Commission's rules, continue to have access to spectrum in the 767-773, 797-803 MHz bands if the proposed nationwide, broadband, public safety network is implemented.

6. Currently, under Section 90.523(b) of the Commission's rules, an NGO is eligible to hold authorization to operate in the 767-773, 797-803 MHz bands on the condition that it

(1) [h]as the ongoing support (to operate such a system) of a state or local governmental entity whose mission is the oversight of or provision of services, the sole or principal purpose of which is to protect the safety of life, health, or property; (2) [o]perates such authorized system solely for transmission of communication essential to providing services the sole or principal purpose of which is to protect the safety of life, health, or property; and (3) [a]ll applications submitted by NGOs must be accompanied by a new, written certification of support (for the

NGO applicant to operate the applied-for system) by the state or local governmental entity [supporting the operations].<sup>3</sup>

7. This rule implements Section 337(f)(1) of the Act, which states that NGO activities are included within the definition of “public safety services” if such operations are “authorized by a governmental entity whose primary mission is the provision of such services.”<sup>4</sup> In addition, the Commission has stated these same criteria will be used to determine which NGOs are eligible to lease spectrum from public safety licensees.<sup>5</sup>

8. Under the proposed broadband public safety network, the 767-773, 797-803 MHz bands will be reallocated and assigned to a central licensee on a nationwide basis. Other than this central licensee, public safety entities will not directly hold individual authorizations issued by the Commission. Instead, under the Commission’s proposed plan, “[the] central licensee will be permitted to use its spectrum to provide public safety entities with public safety broadband service on a fee for service basis.” Under such a plan, a significant amount of authority will rest with the central, nationwide licensee, particularly with respect to determining which entities will receive service and the rates, terms and conditions of such service.

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<sup>3</sup> 47 C.F.R. § 90.523(b).

<sup>4</sup> See 47 U.S.C. § 337(f)(1).

<sup>5</sup> See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17503 (2004).

9. API requests that the Commission clarify that, to the extent the proposed nationwide public safety broadband network is adopted, NGOs that satisfy the eligibility requirements of Section 90.523(b) of the Commission's rules will be eligible to receive service as "public safety entities" from the central, nationwide licensee. Thus, in practice, NGOs will be eligible as public safety entities to receive service from the central nationwide licensee if they obtain written approval from a state or local government entity whose mission is the oversight or provision of public safety services. API believes that such eligibility criteria is mandated by Section 337 of the Act and conforms with the spirit of Section 90.523 of the Commission's rules. It is solely as a result of the novel structure of the nationwide broadband network, namely that Commission authorization will not be issued directly to public safety eligible entities on an individual basis, that such clarification is required.

10. Further, API requests that the Commission require the central, nationwide licensee to provide service to all entities eligible under Section 90.523(b), including NGOs, on a non-discriminatory basis. Under the Commission's proposed plan, the central licensee will provide service to public safety eligible entities under terms, conditions and rates that, presumably, will be distinct from those applicable to service provided to commercial entities. API is concerned that the central licensee may be incentivized to discriminate against NGOs by restricting access to services available to public safety eligibles in favor of requiring NGOs to receive service under the commercial service "tier." In addition, the central, nationwide

licensee may choose to discriminate in price, terms or conditions among entities receiving service under the public safety “tier.” Given the goal of this proceeding, namely widespread availability of interoperable public safety spectrum, the central nationwide licensee should be required to provide service to all public safety eligible entities, including eligible NGOs, on a non-discriminatory basis.

### **III. CONCLUSION**

11. For the forgoing reasons, API respectfully requests that the Commission clarify that, if the proposal for a nationwide broadband public safety network is adopted, NGOs be eligible to receive service so long as the criteria in Section 90.523 of the Commission’s rules is met and that the central, nationwide licensee be required to provide such service on a non-discriminatory basis.

Respectfully submitted,

**THE AMERICAN PETROLEUM  
INSTITUTE**

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